

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the License of **FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**
Victoria Jenkins
10005 Greenbrier Road #115
Minnetonka, MN 55305
to provide child foster care under Minnesota
Rules, parts 9545.5105 to 9545.0445

Administrative Law Judge Bruce H. Johnson conducted a hearing in this contested case proceeding beginning at 9:30 a.m. on August 16, 1999, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. The record closed at the end of the hearing.

Vicki Vial-Taylor, Assistant Hennepin County Attorney, Suite 1210 Health Services Building, 525 Portland Avenue, Minneapolis, Minnesota 55415, appeared at the hearing as attorney for Hennepin County (the County) and the Minnesota Department of Human Services (DHS). Victoria Jenkins, 10005 Greenbrier Road #115, Minnetonka, Minnesota 55305, was not represented by an attorney but rather appeared at the hearing on her own behalf.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Human Services will make the final decision after reviewing the administrative record. The Commissioner may adopt, reject or modify the contents of this report. Under Minnesota law,^[1] the Commissioner may not make his final decision until after the parties have had access to this report for at least ten days. During that time, the Commissioner must give each party adversely affected by this report an opportunity to file exceptions and present argument to him. Parties should contact the office of Michael O'Keefe, Commissioner of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155, to find out how to file exceptions or present argument.

STATEMENT OF ISSUE

Whether the Commissioner should revoke Ms. Jenkins' license to provide child foster care because she maltreated a foster child in her care through neglect.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On July 14, 1997, the County's Child Protection Investigations unit received a report that possible abuse or neglect of a foster child might have occurred in Ms. Jenkins' home during the previous day.^[2]

2. The County's investigation determined that a ten-year-old foster child had received a bruise to the eye, scratches on the neck, and a bloody nose when an adult friend of Ms. Jenkins had attempted to discipline the child on July 13, 1997. The County further found that Ms. Jenkins had witnessed the incident but that she had failed to intervene to protect the child, that she had not attended to the child's injuries, and that she had not reported the incident to the County.^[3] On the basis of these findings, the County determined that Ms. Jenkins had committed maltreatment of a child through neglect by failing to protect the child from conditions that imminently and seriously endangered the child's health or welfare.^[4]

3. On October 3, 1997, the County's Foster Care Licensing Program notified Ms. Jenkins that the maltreatment determination had disqualified her from being licensed as a foster parent.^[5] On October 23, 1997, the County sent Ms. Jenkins a corrected version of that disqualification notice.^[6] Both the original and the corrected notice informed Ms. Jenkins that she had the right to request reconsideration of the County's maltreatment determination but neither notice properly informed her of all her appeal rights. Ms. Jenkins neither requested reconsideration of the maltreatment determination nor appealed it to the Commissioner of Human Services ("Commissioner").

4. By a letter dated December 16, 1997, the County recommended that the Commissioner revoke Ms. Jenkins foster care license.^[7] And on January 26, 1998, the Commissioner issued a revocation order.^[8]

5. By a letter dated February 4, 1998, which the Commissioner received two days later, Ms. Jenkins filed a timely appeal of the revocation order, and this contested case proceeding ensued. A hearing in this matter was scheduled for May 26, 1998.

6. Prior to the hearing, Ms. Jenkins expressed her intention to challenge the County's maltreatment determination. The parties agreed that because the County had not properly informed Ms. Jenkins of her right to appeal that determination to the

Commissioner in a separate proceeding, that remedy was still available to her. The Administrative Law Judge therefore postponed the hearing in this matter indefinitely to allow Ms. Jenkins an opportunity to pursue a separate appeal on the issue of maltreatment.

7. Ms. Jenkins did pursue a separate appeal of the County's maltreatment determination, and she received a hearing on that issue before a DHS appeals referee on September 23, 1998 — a hearing opportunity that Minnesota law provides for licensees in Ms. Jenkins' circumstances.^[9] The issue that the appeals referee considered was whether the county agency properly found that Ms. Jenkins maltreated a child in her care.^[10]

8. After considering the evidence in the record, the appeals referee made findings of fact and concluded that Ms. Jenkins had, in fact, maltreated a foster child under her care through neglect. The appeals referee therefore recommended that the Commissioner affirm the County's maltreatment determination.^[11] On October 10, 1998, the Commissioner adopted the appeals referee's findings and conclusions, and he entered a final order that she had committed maltreatment of a child.^[12]

9. On November 11, 1998, Ms. Jenkins attempted to appeal the Commissioner's decision by faxing a letter to the County that challenged what the Commissioner had done.^[13] By a letter dated November 16, 1998, the Hennepin County Attorney's office advised Ms. Jenkins that if she wished to challenge the Commissioner's decision, she would have to either send a request to DHS for reconsideration of the decision or appeal the decision in district court.^[14]

10. Thereafter, Ms. Jenkins faxed a letter to DHS requesting an appeal of the Commissioner's maltreatment decision.^[15] The Commissioner treated that letter as the request for reconsideration that Minnesota law allowed her to make.^[16] After reconsidering the decision, the Commissioner ended up reaffirming it. He notified Ms. Jenkins of that action by letter on December 24, 1998.^[17] That letter also advised Ms. Jenkins that she still had the right to file an appeal of the decision in district court.^[18] Ms. Jenkins did not appeal the Commissioner's decision to the district court.

11. Since Ms. Jenkins had exhausted all of her rights to challenge the County's determination that she had maltreated one of her foster children, the Administrative Law Judge rescheduled the hearing in this license revocation proceeding for August 16, 1999, and after hearing the evidence submitted by the parties on that issue, closed the administrative record.

12. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

13. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. Minnesota law^[19] gives the Administrative Law Judge and the Commissioner of Human Services authority to consider and rule on the issues in this contested case proceeding.

2. The Notice of and Order for Hearing was proper in all respects, and the County and DHS have complied with all of the law's other substantive and procedural requirements.

3. Minnesota law^[20] establishes the parties' burdens of proof and of producing evidence in proceedings to appeal revocations of family foster care licenses:

[T]he commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner demonstrates that reasonable cause existed, the burden of proof in hearings . . . shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred.

4. Minnesota law^[21] requires DHS to disqualify any person who has been determined administratively to have maltreated a child from having any further direct contact with foster children.^[22] And under child foster care program rules, disqualification of the licensee is grounds for revoking his or her license.^[23]

5. Furthermore, Minnesota law states that a final decision of the Commissioner concerning whether a licensee committed maltreatment is conclusive in a subsequent proceeding to revoke that individual's foster care license.^[24] Since the Commissioner has issued a final decision that Ms. Jenkins maltreated a foster child under her care, she must be considered to have committed maltreatment for purposes of this appeal.

6. The Commissioner demonstrated reasonable cause for revoking Ms. Jenkins' license based on his earlier decision concerning maltreatment. Under Minnesota law,^[25] Ms. Jenkins then had the burden of proof to demonstrate, by a preponderance of the evidence, that she has complied fully with the statutes and rules that apply to the child foster care program. But because of the existing decision concluding that she committed maltreatment, she has failed to meet that burden of proof, and DHS was therefore justified in revoking her child foster care license.

7. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

8. The Memorandum that follows explains the reasons for these Conclusions, and the Administrative Law Judge therefore incorporates that Memorandum into these Conclusions.

Based upon the these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge therefore respectfully recommends that Ms. Jenkins' license to provide child foster care be revoked because she has been found to have committed maltreatment of a foster child under her care.

Dated this 20th day of August 1999.

s/ Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge

Reported: Tape Recorded (one tape); No Transcript Prepared.

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NOTICE

Under Minnesota law,^[26] the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

The reason that the Department revoked Ms. Jenkins' license to provide child foster care was that the County had found that she had committed maltreatment of a foster child under her care through neglect by failing to protect that child from conditions that imminently and seriously endangered the child's health or welfare. Minnesota law does not allow a foster care licensee to challenge a finding of maltreatment in this proceeding. Rather, it provides a licensee with the opportunity for a separate hearing on that issue before one of DHS's appeals referees. In order to provide Ms. Jenkins with that opportunity, the Administrative Law Judge suspended proceedings in this case so that she could pursue that other appeal. Ms. Jenkins did pursue that other appeal of the County's maltreatment finding, and both the appeals referee and the Commissioner ruled against her. Her rights to have that decision reconsidered or to appeal it have all been exhausted. Ms. Jenkins still argues that both the appeals referee and the Commissioner were wrong about what actually happened to the foster child under her care. But under Minnesota law, this Administrative Law Judge is bound by the Commissioner's earlier decision, and the law does not allow him to hear evidence and come to a different conclusion.

Maltreatment of a child is against the law^[27] and is grounds for disqualifying a foster care provider from having any further contact with foster children. That kind of disqualification, in turn, is grounds for revoking a foster care provider's license.^[28] Ms. Jenkins therefore failed to meet her burden of proof to demonstrate, by a preponderance of the evidence, that she has complied fully with the statutes and rules that apply to the child foster care program.

B. H. J.

^[1] Minnesota Statutes, section 14.61 (1998). (Unless otherwise specified, citations to Minnesota Statutes refer to the 1998 edition.)

^[2] Exhibit 4.

^[3] Exhibit 4.

^[4] Exhibits 3 and 4.

^[5] Exhibit 1.

^[6] Exhibit 2.

^[7] Exhibit 3.

^[8] Exhibit 4.

^[9] Exhibit 6. See Minnesota Statutes, section 256.045, subdivision 3(8).

^[10] Exhibit 6.

^[11] Exhibit 6.

^[12] Exhibit 6.

^[13] Exhibit 7.

- ^[14] Exhibit 8.
- ^[15] Exhibit 9.
- ^[16] See Minnesota Statutes, section 256.045, subdivision 5.
- ^[17] Exhibit 10. That letter was mistakenly dated “December 24, 1996.”
- ^[18] Exhibit 10.
- ^[19] Minnesota Statutes, sections 14.50, 14.57, 14.69, and 245A.01 through 245A.16.
- ^[20] Minnesota Statutes, section 245A.08, subdivision 3(a).
- ^[21] Minnesota Statutes, section 245A.04, subdivision 3d.
- ^[22] Minnesota Statutes, section 245A.04, subdivision 3(f).
- ^[23] Minnesota Rules, part 9543.1060, subpart 4B.
- ^[24] Minnesota Statutes, section 256.045, subdivision 3b.
- ^[25] Minnesota Statutes, section 245A.08, subdivision 3(b).
- ^[26] Minnesota Statutes, section 14.62, subdivision 1.
- ^[27] Minnesota Statutes, section 626.556.
- ^[28] Minnesota Rules part 9543.1060 , subpart 4.